

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1088 of 1987

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not?No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

of the judgement? No

of the judgement? No

of the judgement? No

of the judgement? No

of the judgement? No

of the judgement? No

of the judgement? No

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4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

NIXIT R SHAH

Versus

GENERAL MANAGER, MONOGRAM MILLS LTD

Appearance:

MR. P.R. ABICHANDANI FOR MR YN OZA

for Petitioner

MS. P.J. DAWAWALA FOR MR KN RAVAL

for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 01/03/96

Oral Judgment :

1. The petitioner was working as a Clerk in the Sales Department of Monogram Mills, which is a Unit of Gujarat State Textile Corporation. He was recruited in the Monogram Mills in the year 1973 and was confirmed in 1974. By an Ordinance dated 18-11-85 the Mill was taken over by the Gujarat State Textile Corporation and, thereafter, the petitioner was recruited by the Gujarat State Textile Corporation on 1-1-87. The petitioner's case is that on 9-2-87 "Ahmedabad Bandh" call was given and, therefore, many Mills in the City of Ahmedabad remained closed as the situation in the City was tense. Workers could not enter the Mill after 11.0 A.M. and only the clerical staff was present. The petitioner approached the Factory Manager of the respondent-Mill and sought his permission to leave the Mill premises as there was no security outside the Mill premises. The petitioner alongwith other clerical staff members were permitted to leave the premises on 9-2-87. Later on i.e. on 11-2-87 the petitioner was called by the Technical Adviser and the petitioner was threatened with dire consequences for taking leadership or carrying out any sort of union activity. It is alleged that he was thrown out from the Mill premises and the security staff was asked not to allow the petitioner to enter the premises from the next day. The petitioner sent a notice dated 13-2-87 through his lawyer to the respondents Nos.1 and 2 that he had been wrongly removed from the service and that it was unfair on the part of the respondents to treat a permanent employee like the petitioner in such an arbitrary and unreasonable manner. It is alleged that it was a case of victimization on account of his Union activities. It is also the petitioner's case that his services were terminated by an oral order.

2. The petitioner filed this petition on 7-3-87 against his termination, as aforesaid. The notice was issued on 8-10-87 and on the same date there was another order drawn that the petition was dismissed as withdrawn. It was found that the order dismissing the petition as withdrawn has been erroneously recorded and the same was, therefore, revoked and the petition was restored and the Rule was then issued on 25-10-89 when no one appeared on behalf of the respondents despite service. Although the petition had been admitted way back in 1989, no return was filed until this Court passed the order on 23-2-96 when the matter came up for hearing and, thereafter, the affidavit-in-reply dated 27-2-96 was filed to which an affidavit-in-rejoinder has also been filed on 28-2-96.

3. The respondent-Mill has taken the stand that in fact the services of the petitioner were never terminated. The petitioner himself did not come on the job. In support of this argument, alongwith the reply, two documents have been filed and it appears from the photostat copy of the letter dated 18-6-87 that the respondent-Mill had called upon the petitioner to join the service, but he did not join. May be that the petition had been filed before the issue of this letter, but the case, which has been now projected in the rejoinder in 1996, that in response to this letter dated 18-6-87 the petitioner had gone to join the duty but he was not allowed to join the same, was not brought on record even in the year 1989 when the Rule was issued by this Court.

4. Be that as it may, there is a dispute as to whether the petitioner reported on duty in response to the letter dated 18-6-87 or not. But the case of the respondent is very categorical that the services of the petitioner had not been terminated. It appears that the petitioner was under some mistaken but bonafide belief that his services had been terminated merely because he was thrown out of the Mill premises in the year 1987 as aforesaid. The learned counsel for the petitioner has given out that the petitioner's age is 42 years only by now and in the year 1987, when his services were said to be terminated, he had already rendered service for a long period as he was initially appointed in the year 1973.

5. Looking to the totality of the facts, I am of the opinion that the ends of justice will be served if the respondents are directed to take the petitioner back in service on or before 1-4-1996 without any wages for the intervening period from 1987 till the date he is reinstated, but the continuity of the service shall be maintained as if he has been continuing in the employment through-out. It is, however, made clear that no financial benefits will be available to the petitioner except the question of fixation of the pay on notional basis from 1-4-1996 keeping regard to the fact as if he has been continuing in service. Except the financial benefits for the intervening period with regard to the backwages, the petitioner shall be entitled to all other consequential benefits.

6. This Special Civil Application is accordingly allowed in the terms as aforesaid. Rule is made absolute with no order as to costs.

